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WASHINGTON, DC 20006

**MAILED**

**FEB 27 2009**

In re Application of : **OFFICE OF PETITIONS**  
Hideki Hayashi, et al :  
Application No. 09/974,914 : **ON PETITION**  
Filed: October 12, 2001 :  
Attorney Docket No. 2001\_1542A :  
:

This is to notify petitioner that the petition under 37 CFR 1.313(c)(2), filed by facsimile transmission on January 2, 2004, to withdraw the above-identified application from issue after payment of the issue fee, was **dismissed as moot** as of January 20, 2004, the date upon which the above-identified application issued as U.S. Patent No. 6,680,894.<sup>1</sup>

Petitioner's attention is directed to 37 CFR 1.313(d) which states that "A petition under this section [37 CFR 1.313(c)] will not be effective to withdraw the application from issue **unless it is actually received and granted by the appropriate officials before the date of issue**" (emphasis in bold). In this instance, the January 2, 2004 petition was not received by the appropriate official until after the date of issuance of U.S. Patent No. 6,680,894 on January 20, 2004. See also MPEP 1308, which states, in pertinent part:

**"The Office cannot ensure that any petition under 37 CFR 1.313(c) [filed after payment of the issue fee] will be acted upon prior to the date of patent grant. See *Filing of Continuing Applications, Amendments, or Petitions after Payment of Issue Fee*, Notice, 1221 Off. Gaz. Pat. Office 14 (April 6, 1999) . . . applicants are strongly cautioned to file any desired RCE prior to payment of issue fee. In addition, applicants considering filing a RCE after payment of the issue fee are strongly cautioned to call the Office of Petitions to determine whether sufficient time remains before the patent issue date to consider (and grant) a petition under 37 CFR 1.313(c) and what steps are needed to ensure that a grantable petition under 37 CFR 1.313(c) is before an appropriate official in the Office of Petitions in sufficient time to grant the petition before the patent is issued"** (emphasis in bold).

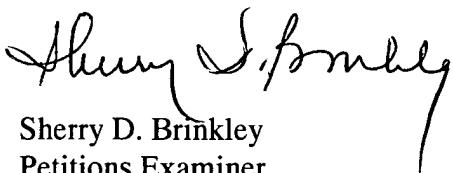
<sup>1</sup> The jurisdiction of the Office over an application ends once the application issues as a patent.

While petitions to withdraw from issue may be faxed to the Centralized Facsimile Number, as was done in this case, applicants were cautioned to hand carry petitions to withdraw from issue directly to the Office of Petitions to allow sufficient time to process the petition. (See *Centralized Delivery and Facsimile Transmission Requirements for Patent Application Related Correspondence*, 1275 Off. Gaz. Pat. Office 200 (Oct. 28, 2003)).

Because the January 2, 2004 petition under 37 CFR 1.313(c) to withdraw from issue was not granted, the Request for Continued Examination (RCE) filed on January 2, 2004, is considered an improper submission under 37 CFR 1.114. Accordingly, the RCE and accompanying amendment and Information Disclosure Statement (IDS) will remain in the file of the above-identified patent without further consideration.

No fees, in regard to papers filed on January 2, 2004, were charged to counsel's deposit account, nor are any due.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.



Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions